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PATENT

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of GORTHY et al.

Confirmation No.: 9237

Serial No.: 09/942,834

Examiner: H. PHILLIPS

Filed: 08/29/2001

Art Unit: 2151

FOR: SYSTEM AND METHOD FOR GENERATING A CONFIGURATION SCHEMA

Mail Stop AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Sir:

In response to the Final Office Action ("Final Action") of January 3, 2006, Applicants respectfully request a review of the above-identified matter prior to filing of an Appeal Brief. A Notice of Appeal is filed herewith under 37 C.F.R. 41.31. Applicants submit that a review is appropriate because there are several limitations in the claimed invention that have not been identified in the prior art by the Examiner.

ARGUMENT

Claims 6-12, 16, 24, 25 and 27 remain pending in this application for consideration. Reconsideration of claims 6-12, 16, 24, 25 and 27 in light of the remarks below is respectfully requested.

Claim Rejections Under 35 U.S.C. §103(a)

Claims 6-12, 16, 24, 25 and 27 stand rejected on the basis that they are rendered unpatentable by U.S. Patent No. 6,816,897 ("McGuire") in view of U.S. Patent No. 6,959,332 ("Zavalkovsky"). Applicants submit this rejection is improper because the Final Action has not identified at least a suggestion of each limitation of claims 6-12, 16, 24, 25 and 27 within the combination of McGuire and Zavalkovsky.

With respect to independent claims 6 and 24, the Final Action erroneously contends that Zavalkovsky, at (Col. 7, lines 56-67) teaches retrieving "a command set from the network component" as recited in claims 6 and 24. In contrast to "retrieving" a command set from a network component, Zavalkovsky teaches *creating* CLI commands based on a configuration of their device. Specifically, at Col. 7, lines 56-67, Zavalkovsky teaches:

"the current *configuration* of each device is received and analyzed....based on the current device *configuration* received from the device, *the process determines one or more specific CLI commands* that would create such configuration if sent to and executed by the operating system of the device. As a result, a list of CLI commands for the current device configuration *is created*" (emphasis added).

Accordingly, McGuire and Zavalkovsky cannot be the basis for a proper 35 U.S.C. § 103(a) rejection of claims 6 and claim 24, or the corresponding dependent claims.

In addition, the Final Action erroneously contends that Zavalkovsky, at Col. 7, line 56 through Col. 8, line 21, teaches generating "a configuration schema" as recited in claims 6 and 24. A simple word search of the Zavalkovsky patent, however, reveals that it does not once mention "configuration schema." Moreover, the Final Action does not

identify with any specificity any construct, from among the many constructs within the teachings of Zavalkovsky, that allegedly corresponds to the recited “configuration schema;” thus the rejection is improper under both §103(a) and 37 CFR 1.104 (c)(2), which requires:

When a reference is complex or shows or describes inventions other than that claimed by the applicant, *the particular part relied on must be designated as nearly as practicable*. The pertinence of each reference, if not apparent, must be clearly explained and each rejected claim specified. (emphasis added).

Applicants also submit that the rejections of dependent claims 2-12, 16, 25 and 27 are also improper because the independent claims from which these dependent claims depend include several limitations not identified in the prior art. In addition, the dependent claims also include limitations neither taught nor suggested by the prior art.

As an example, claim 8 recites “retrieving a set of primary commands” and “retrieving a set of subcommands for each of the primary commands.” In addition, claim 27 recites “retrieve a bound for a first command in the command set.” The Final Action contends that Zavalkovsky teaches these limitations at Col. 7, lines 56-67, but a simple word search of Zavalkovsky reveals that it does not mention either “primary commands,” “subcommands” or “a bound,” nor does the Final Action identify with any specificity any construct, from among the many constructs within the teachings of Zavalkovsky, that allegedly corresponds to the recited “primary commands,” “subcommands” or “bound;” thus the rejection is improper under both §103(a) and 37 CFR 1.104 (c)(2).

Applicants would like to make clear that the arguments presented herein are merely those that are most appropriate for pre-appeal brief review and are certainly not

the only arguments related to patentability. Additional and more detailed arguments are expressly reserved for an Appeal Brief.

SUMMARY

The rejections under §102(b) are improper and claims 21-29 and 32-33 are allowable. Applicants respectfully request such a finding for the reasons set forth herein. The Commissioner is hereby authorized to charge any appropriate fees under 37 C.F.R. §§1.16, 1.17, and 1.21 that may be required by this paper.

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